verse to the interests of others in the same business." *Carter v. Carter Coal Co.*, 298 U.S. 238, 311, 56 S.Ct. 855, 873, 80 L.Ed. 1160 (1936). Since the FCC has here retained its final authority over these possible surcharges, which cannot go into effect unless and until the Commission approves them, and since the Commission has not prescribed any formula for their composition, it is premature to accuse the agency of an unlawful delegation. Nor will it be open to the charge if, upon presentment by any exchange carrier of its plan for imposing such charges on private system in the future, it takes due note and careful consideration of the views of all interested parties. For the present, however, there is no case that presents any issue that is ripe for review.

4. *Foreign Exchange ("FX") Service*

Foreign exchange ("FX") service is another component of the nation's communication system.[42] "Foreign exchange service is a combination of a local telephone access with a dedicated intercity private line which permits the public to call a local number to reach an ... office in a distant city." Brief for ARINC at 6, n. 3. "For example, if an airline with a central reservation office in Kansas City acquires FX service between Kansas City and Denver, a potential Denver customer can dial a 7-digit local phone number in Denver—the 'open end'—to reach the Kansas City reservation bureau—the 'closed end'." Brief for the BOCs at 66, n. 75. Every call going out through an FX number is an interexchange long-distance call. Thus every FX call uses the local loop's non-traffic sensitive equipment. This is undisputed. Under the old regime, however, FX users paid only the cost of a local business line and made no contribution for access to the "foreign exchange" similar to that assessed users of MTS/WATS or equivalent OCC-provided long distance services. FX users enjoyed a uniquely privileged spot in the rate structure.

The FCC determined that this special preference within the rate structure had to be eliminated. The Commission commented in its *Access Order* that

> [T]he current methods of recovering costs of jointly used non-traffic sensitive subscribed plant for MTS, open-end FX, CCSA and WATS service and the ENFIA services are totally different and produce widely differing results even though each service uses the same plant in the same manner. The FX and CCSA services pay local exchange rates for open end access, the MTS/WATS equivalent services must pay the higher ENFIA rates, and MTS and WATS pay even higher access compensation through the settlements and divisions of revenue process.

Access Order, 93 F.C.C.2d at 258. As discussed, *supra*, the FCC, as one of its ultimate goals, projected a single-tier rate structure within which all providers of interstate service would pay the same carrier access charges. As a way station on the road to equal rates, however, the FCC established a two-tier system that recognized the reality of premium access enjoyed by some carriers, primarily AT & T. The OCCs thus will temporarily pay less in recognition of their inferior access. The FCC also chose to place the FX users into this second tier and, recognizing that while most FX users depend heavily upon the service, others use it only lightly, the Commission also determined that carriers would recoup the cost of access on a minutes-of-use basis rather than through a flat charge.

While ARINC initially applauded the FCC's proposal to move the industry to a cost-based footing for access, *See* Comments of Aeronautical Radio, Inc. at J.A. 1387, its enthusiasm quickly waned when it became apparent that the new plan would require of FX users that which it would require of all other equivalent services—payment of a fair share of their attributable costs. *See* Opposition of ARINC at J.A. 2469. ARINC's stake in the treatment of FX service is considerable:

42. "Foreign" indicates an exchange in another state, and not one in a foreign country.

> The airlines have established a system of some 12,000 foreign exchange ("FX") circuits to provide the public with toll-free access to airline information services. Use of FX lines enables the airlines to absorb the cost of intercity calls when members of the public contact an airline office in a distant city for flight information, reservations, and other services.

Brief for ARINC at 6. The FCC's plan presented the airlines with an "increase from a typical $30 per month charge for business service at FX open ends to, as a minimum, the $235-plus per month non-premium carrier charge, *some eightfold increase.*" *Id.* at 32 (emphasis in original). ARINC's most recent estimate of the total cost increase the airlines will incur is approximately $30 million annually. Reply Brief for ARINC at 18, n. 20. We have no reason to doubt the accuracy of ARINC's cost forecasts.

The FCC's response to ARINC's complaints appeared first in its *Further Reconsideration Order.* The Commission noted that "FX customers pay substantially less for each minute of use of the foreign exchange's local network than would an MTS customer or the customer of an OCC using that carrier's MTS-like service." *Id.*, ¶ 99, n. 46, 49 Fed.Reg. at 7822. The FCC then responded to ARINC's comments:

> The ARINC petition apparently requests that initial access charges for open end FX access be established at a level that is lower than the access charges for MTS/WATS equivalent services in order to provide FX users with a more gradual transition from the existing charges.... The rules that we adopted in the *Access Charge Order* were designed in part to remedy the longstanding discrimination between rates charged FX and MTS users, thus satisfying one of the central purposes of this proceeding. As early as the *Second Supplemental Notice* we presented a plan to establish parity between FX and MTS rates. 77 F.C.C.2d 224. The *Access Charge Order* achieved this parity in a way that differed somewhat from the plan described in the *Second Supplemental Notice.* That *Order* required that carrier's carrier charges, including Carrier Common Line charges, be assessed in the foreign exchanges for each minute of use that FX service made of that local network. Petitioners have not demonstrated that FX charges that are lower than OCC charges would be warranted.

Id.

ARINC's argument on appeal is relatively simple. It argues that throughout the FCC's orders there runs the recurring theme that the Commission has been on guard against potentially devastating impacts of the new rate structure upon certain classes of communications consumers. This concern has been embodied in a variety of transitional devices designed to introduce consumers of specified services to the new access charges in stages. "In sharp contrast to its solicitude for the impact of its decision on other entities," ARINC argues, "the agency totally ignored the impact on subscribers of the largest rate increase it prescribed ...", namely, FX users. Brief for ARINC at 32. "[T]he Commission failed to take into account the manifest threat to the viability of an industry already under severe financial strain—the airlines," continued ARINC. *Id.* at 33. It concluded:

> The Commission's complete indifference to the plight of FX users facing massive rate increases, in contrast to its oft-repeated solicitude for all other entities facing even a fraction of such an impact, flies in the face of its obligation to deal evenhandedly with different parties who are similarly situated.

Id. at 35. ARINC refers the court to a well-known series of cases which undoubtedly do establish the proposition that an agency must "take pains to reconcile an apparent difference in the treatment accorded litigants circumstanced alike." *Garrett v. FCC,* 513 F.2d 1056, 1060 (D.C. Cir.1975). *See also Melody Music, Inc. v. FCC,* 345 F.2d 730, 732–33 (D.C.Cir.1965).

The FCC's response to ARINC's objections is twofold. First, the agency repeats what it has earlier stated in its orders: it must treat FX users as it does the users of MTS/WATS or similar OCC-provided services in order to avoid violating its statutory command of non-discrimination. Second, the Commission points to various aspects of its plan which do take into account concerns for the position of FX subscribers:

> In fact, the Commission did consider the transitional impact on FX customers in designing its access plan. First, FX customers pay only non-premium access rates, even though it costs virtually the same to provide the FX line-side connections as it costs to provide the premium trunk-side connections.... Second, the FCC decided to assess the FX non-premium charge on a per minute rather than on a per line basis in order to protect those FX customers with relatively low usage.... Third, the Commission has recognized the "substantial hardship" that low-volume FX customers might suffer in areas in which no FX usage measurement capability now exists.... The FCC refused to allow carriers in such areas to charge a flat FX rate based on a monthly minute count of 4,076, which the FCC viewed as too high. Instead, the Commission permitted carriers to charge the equivalent of the local business rate, or to develop some other reasonable surrogate charge... These measures show that while the FCC may not have gone as far as ARINC might have liked, ARINC is certainly wrong to assert that the Commission entirely ignored the impact on FX customers of the new access rates.

Brief for the FCC at 106–108.

We begin by noting that the FCC's first order in this matter appeared on March 11, 1983. The new plan will take effect, at the earliest, in June of 1984. Thus *every* subscriber to *any* service which will be assessed an increase in cost due to access charges will have in effect enjoyed a minimum period of transition of more than a year. This does not even include the far longer period of time beginning with the *Second Supplemental Notice* in April of 1980 when notice was first given that the FCC intended to remedy the discrimination in rates between MTS, OCC and FX users. *Second Supplemental Notices,* 77 F.C.C.2d 224 (1980). Charges that the FCC has acted precipitously with regard to any class of user simply do not wash. Exclamations of "rate shock" are similarly undermined when the period since first notice has itself become a protracted delay.

Second, the court need not accept AT & T's characterization of FX users as that category of users "who, more than any other class of users, have escaped responsibility for massive interstate use of local facilities," Brief for AT & T at 54, to nevertheless conclude that FX subscribers have been enjoying very advantageous benefits for many years. The size alone of the airlines' FX network is eloquent testimony of advantages enjoyed by FX users over consumers of other means of interstate connection. FX service appears to be the functional equivalent of standard long-distance and like services. Nothing in the record indicates that FX customers using FX service deserve any better treatment than customers of those other services who will ultimately be required to bear the cost of the new access charges. FX customers have in the past enjoyed what amounted to a subsidy paid for by other long distance users.

Third, we are impressed with those features of the FCC's plan that do cushion the blow for FX users. Indeed, we are hard pressed to understand why FX users are not being charged the premium rate for access as MTS customers, unless the FCC in fact gave some consideration to the rate shock which FX users will feel when introduced to the new order.

We must reject ARINC's attempt to reclassify FX as something other than the equivalent of MTS (long distance) service. ARINC shrewdly attempts to obscure obvious differences between FX and other services such as PBX and Centrex-Co and then to argue that it deserves every consideration shown these categories of services. There are substantial differences. Throughout this proceeding the FCC has taken great pains to draw a great number of careful and often subtle distinctions. It has done so here as well. ARINC urges the court to redraw the lines and shuffle the categories—a chore for which we are manifestly not suited. While the court is most certainly "not a hostile stranger to the office of first instance",[43] neither is it the draftsman of intricate new plans.

[36] We must also point out that it is possible both to accept the accuracy of ARINC's portrayals of the cost impact about to hit the airlines and to dismiss that consideration as irrelevant. Woven into ARINC's brief is the theme that, somehow, the airlines are different. But, so far as this appeal is concerned, they are not. ARINC could not seriously argue that the impact upon a single industry of the FCC's vast and ambitious reworking of the communications industry's rate structure could in any way affect the outcome of our review. There are winners and losers galore as a result of the FCC's plan which will eventually place the cost of services provided upon those who use the facilities. It is certainly not within the scope of this court's review to seize upon the impact on a single industry as a reason for returning the FCC to its drawing board. Consideration of the FX-connected question places us in the center of the FCC's ambit of discretionary authority. Accordingly, we affirm this segment of its plan.

III. Conclusion

Over five years' study of complex and far-ranging issues set the foundation for the FCC's orders in this case. The Commission predicted industry trends and the impact of rate changes, reconciled widely diverse policy goals and numerous competing interests, and devised solutions to novel and difficult problems. Confronting rapid and fundamental changes in the telephone industry as a result of competition and fast-moving technology, the FCC acted for the most part with flexibility and care. The Commission's work fell short of the ideal at several turns, but our review does not and cannot require perfection. *See MCI Telecommunications Corp. v. FCC,* 627 F.2d 322 (D.C.Cir.1980); VOLTAIRE, DICTIONNAIRE PHILOSOPHIQUE (Dramatic Art) (1794) ("Le mieux est l'ennemi du bien"—the best is the enemy of the good).

[37] We do not find unreasoned the Commission's determination that, to the extent practical, telephone prices should be "based upon the true cost characteristics of telephone company plant." *Access Order* ¶ 28, 93 F.C.C.2d at 251. Nor, with limited exceptions, can we quarrel with the FCC's exercise of judgment in deriving workable formulas, estimating numbers that cannot be mathematically proved, and making equitable assessments of the speed with which changes should be introduced.

Further refinements to the FCC's plan could be debated endlessly. However, the Commission has reached a point in its deliberations where "a month of experience will be worth a year of hearings." *American Airlines, Inc. v. CAB,* 359 F.2d 624, 633 (D.C.Cir.), *cert. denied,* 385 U.S. 843, 87 S.Ct. 73, 17 L.Ed.2d 75 (1966). The FCC has not achieved a plan of pristine quality. But "[i]n the words of Voltaire: Perfection is attained by slow degrees; it requires the hand of time." *Access Order,* 93 F.C.C.2d at 364 (statement of Commissioner Quello).

For the reasons stated, we affirm the Commission's orders in principal part, and remand for further consideration consistent with this opinion the segments on party line service and small telephone companies' election of "average schedule company" status.

It is so ordered.

43. *Greater Boston Television Corporation v. FCC,* 444 F.2d 841, 852 (D.C.Cir.1970), *cert. denied,* 403 U.S. 923, 91 S.Ct. 2233, 29 L.Ed.2d 701 (1971).

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